Recent data also indicate that even the interfaces that are currently in commercial use -- primarily the ones for resale services -- are not yet sufficiently reliable to be deemed operationally ready. Indeed, the evidence shows that when CLEC demand has increased substantially, the percentage of the orders that "fall out" to manual processing has likewise increased substantially, even though the demand was still well within the purported capacity of Ameritech's interfaces.

Attached hereto as Exhibit G are two charts that Ameritech recently presented to the Michigan Public Service Commission which evidence this point. These charts show the resale orders that Ameritech received daily from AT&T during the month of April and up to and including May 21, 1997. They show that even though the order volume was well within Ameritech's stated capacity of 368,800 per month [see Ameritech Brief at p. 30], on several days nearly one-half (or more) of merely 3500 orders were not processed electronically, but "fell out" to manual intervention. As this Commission has recognized, "an incumbent that provisions network resources electronically does not discharge its obligations under § 251(c)(3) by offering competing providers access that involves human intervention . . . ." [Local Competition Order at ¶ 523.] Such a high level of manual intervention indicates that Ameritech's OSS interfaces are not operationally ready, and are not yet clost to providing parity of access to competing carriers.

V. AMERITECH CANNOT PROVE THAT IT IS PROVIDING PARITY OF ACCESS TO ITS OSS BECAUSE IT LACKS ADEQUATE PERFORMANCE MEASUREMENTS AND STANDARDS

In the Petition for Expedited Rulemaking that LCI and CompTel filed on May 30, 1997, we explained the crucial importance of requiring an ILEC, such as Ameritech, to disclose the performance standards, and related historical data and measurements, pertinent to its OSS functions. Specifically, requiring such disclosures is necessary to allow CLECs, this Commission, and the state commissions, to determine if Ameritech is providing the required promised parity of OSS access. [See Local Competition Order at ¶ 316 ("the

incumbent must provide access to [OSS] functions under the same terms and conditions that they provide services to themselves"), and at ¶ 518 (competing carriers must be provided with the ability "to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself").]

Simply stated, unless one knows the performance levels at which Ameritech provides the various OSS functions to itself, one cannot know whether the performance levels Ameritech provides such OSS functions to LCI and others is at a level at least equal to what Ameritech provides itself. The Department of Justice took a similar position in its Evaluation of the SBC petition [see especially, the Friduss Affidavit at 5 ("The ability to detect discrimination . . . is dependent on the establishment of performance measures, allowing competitors and regulators to measure the BOC's performance") and 25 ("the ability to test whether parity exists or whether discrimination is taking place is dependent on the existence of explicit and specific performance measures and the reporting of results").]

We expect others to comment and document in further detail the shortcomings of Ameritech in providing its performance standards and related measurements and data. However, it is our understanding that Ameritech's current performance standards are lacking in several fundamental respects, including:

(i) the performance reports Ameritech has submitted for the timeliness, availability or accuracy of the OSS access provided to CLECs do not include information regarding Ameritech's own local retail operations, as a result of which, it is impossible to determine whether parity is being provided;

(ii) Ameritech's reports do not include a sufficient statistical analysis of differences in performance levels, without which it is impossible to tell whether parity is being provided;

(iii) Ameritech's reports show percentages that exceed some "target" level selected by Ameritech, but this approach actually: (a) conceals the actual levels of

the company's performance for the groups being compared (*e.g.*, a "target" of 15 second response time might be reached for CLECs while Ameritech might be itself enjoying a five second response time); (b) can be highly misleading because it does not show the extent to which Ameritech's performance exceeds the target for all the companies being compared; and (c) allows Ameritech to conceal unacceptable performance by its choice of the "target" levels -- and Ameritech does not attempt to explain meaningfully why its reports do not instead provide a direct comparison of Ameritech's performance for CLECs with its performance of its own retail representatives, which would avoid these data interpretation problems;

(iv) Ameritech's performance measurements fail to provide separate measures for each of the OSS interfaces or functions that Ameritech is obligated to provide to CLECs, but instead, Ameritech provides only a subset of these interfaces, while others Ameritech says will "be determined" in the future;

(v) Ameritech aggregates data (*e.g.*, it combines into a single report business and residence categories for order completion performance), which can lead to the false conclusion that parity is being provided, when it is not; and

(vi) Ameritech's proposed audit process is far too narrow, in that it does not extend to all the performance measures used by Ameritech to show parity of performance.

LCI has worked with LCUG to develop meaningful performance standards. As described in detail in LCI's Petition for Expedited Rulemaking and Appendices H and I hereto (App. A and B to Petition). LCUG has developed qualitative and quantitative performance standards at a meaningful level. The Friduss Affidavit filed with the DOJ Evaluation of the SCB 271 Application parallels this approach. These approaches provide appropriately defined and sufficiently detailed information regarding performance of OSS functions, and would allow for statistically meaningful comparisons. Until Ameritech

adopts these (or comparable) standards, it cannot meet its burden of proving that it is providing parity of access to its OSS, as required by the Act.

VI. AMERITECH HAS TAKEN ACTION TO FORECLOSE COMPETITION IN ITS LOCAL SERVICE MARKET AND GRANTING ITS APPLICATION WOULD NOT, THEREFORE, BE IN THE PUBLIC INTEREST

Before granting Ameritech's application, the Commission must find that authorizing Ameritech to enter the long distance market is "consistent with the public interest, convenience and necessity." [§ 271(d)(3)(C).] This test must be satisfied in addition to all the other tests. In this regard, Ameritech bears the burden of clearly demonstrating that the benefits of its entry into the long distance market outweigh any harm that it might cause to competition in the local service market. In making its determination, the Commission may look to any information relevant to the RBOC or the state that could affect the provision of exchange service by competitive carriers.

Ameritech's application must be rejected in view of the indisputable fact that it has created, and continues to impose, a severe bottleneck to local competition through the application of a series of long-term contracts and related practices. These anticompetitive actions were set forth in LCI's May 22 and June 4, 1997 letters to Ameritech, and are discussed below. See Ex. E and L hereto.

A. Ameritech's Anticompetitive Long-Term ValueLink Contracts.

More that two months ago, on March 21, Brooks Fiber filed a complaint ("BF Complaint") against Ameritech in Michigan challenging Ameritech's so-called ValueLink contracts. [BF Complaint ¶¶9-15.] Although a settlement appears to have been reached between those two parties, that settlement has been challenged by the Michigan PSC staff. [Staff's Response and Objections to Brooks Fiber's Motion to Withdraw the Complaint and Proposed Settlement, 5/23/97.]

Ameritech's ValueLink Calling Plus Plans are long-term agreements, varying in length from twelve to thirty-six months, where the customer "commits to a minimum monthly usage to secure a reduced rate for intraLATA toll calls," [BF Complaint at 6-7 (explaining that the minimum usage amounts vary from $50 per month to $1,000 per month); Declaration of William Lockwood ("Lockwood Decl.") at ¶ 3.] If the customer does not meet that monthly minimum, the customer is billed the difference between actual usage and the minimum. If the customer wishes to terminate its ValueLink agreement, it must pay in one lump sum all the minimum monthly charge for all months remaining on the contract as a so-called "termination charge." [Lockwood Decl. ¶ 3.] And, if the customer wants to switch its local service to an Ameritech competitor, Ameritech will not allow the customer to continue under the ValueLink contract and will seek to collect the full "cancellation charge." In short, "the customer who believes it has purchased only an intraLATA long distance calling plan has also, in effect, tied itself to solely using Ameritech's local exchange service as well." [BF Complaint at 8.]

The Brooks Fiber complaint details the enormous financial penalty that CLECs like itself face in trying to enroll Ameritech customers. In short, the CLEC has to pay out thousands of dollars to cover customers' "termination charges.": Indeed, the 1997 version of one of Ameritech's ValueLink plans locks customers into minimum annual revenue commitments of between $50,000 and $200,000 annually for two or three year terms, and still the termination charge in these contracts is the entire unpaid lifetime value of the contracts, with no discount. See Ex. L and attachments thereto. Thus, if a $200,000 per year Ameritech ValueLink customer asks to switch to LCI after the first of a three year ValueLink contract, the terms in the Plan would require the customer to pay Ameritech $400,000, or require LCI to assume that amount of liability, just to obtain new service.

LCI has a growing list of customers whose orders for service have been placed on hold because the potential termination liability under the ValueLink plans is so high. [Charity Aff. at ¶ 18 and Exhibit 10.] But even that does not come close to portraying the

seriousness of the problem, for it is estimated that at least 50 to 60% of the available local business customer base in Michigan is on a ValueLink plan. [Lockwood Decl. ¶ 4; Charity Aff. at ¶ 17.]

There can be no serious dispute that Ameritech has monopoly power in Michigan's local telephone service market. Whether called a "tying arrangement," a plan "to increase rivals cost," or otherwise, sections 1 and 2 of the Sherman Act prohibit a monopolist from using such long-term, onerous arrangements to lock-in customers and thereby perpetuate its monopoly, long condemning them as illegal restraints of trade. [See *e.g.*, *International Bus. Machs. Corp. v. United States*, 298 U.S. 131 (1946), *International Salt Co. v. United States*, 332 U.S. 392 (1947), *Northern Pac. Ry. v. United States*, 356 U.S. 1 (1958), *Digidyne Corp. v. Data General Corp.*, 734 F.2d 1336 (9th Cir. 1984), *cert. denied*, 413 U.S. 908 (1985).] Indeed, the Commission has so recognized this established principle of antitrust law when it warned:

> By "locking in" customers with substantial discounts for long-term contracts and volume commitments before a new entrant that could become more efficient than the incumbent can offer comparable volume and term discounts, it is possible that even a relatively inefficient incumbent LEC may be able to forestall the day when the more efficient entrant is able to provide customers with better prices."

[*In the Matter of Access Charge Reform,* CC Docket No. 96-262, et al., Notice of Proposed Rule Mailing, Third Report and Order, and Notice of Inquiry (Dec. 24, 1996) at ¶ 190.]

Here, there can be little, if any, genuine dispute that Ameritech developed its most recent iterations of the ValueLink contracts precisely to stifle competition. That conclusion finds strong support in the clear documentary record (*i.e.*, the contracts between themselves), which shows that, as the prospect of local competition became nearer, Ameritech stalled and delayed implementing 1+ dialing parity in Michigan, despite literally

years of orders from the Michigan PSC. Today, only 70% of the intraLATA toll market is open; Ameritech will not open the remaining 30% of the market until 10 days prior to being allowed into interLATA service. [10] Ameritech tightened the termination provisions to make it even more difficult for customers to get out of the plans or downgrade their usage commitment levels. For example, beginning in 1992, the "penalty" for early termination was just 50% the monthly rate for each month left on the contract; as of 1996, however, the "penalty" was increased to 100%. But whatever Ameritech's intent, the effect could not be more clear -- indeed, it is difficult to imagine a more effective weapon to preclude customers from switching their local service to competitors. [Compare Ameritech's Value Calling Plan, Form 12626-2, dated 1/92, with Ameritech's ValueLink Plus Agreement, dated 1/96, attached hereto respectively as Exhibits C and D.]

B. Ameritech's Anticompetitive Billing Practice, Which Explicitly Tie Local Service to its Anticompetitive ValueLink Contracts.

In 2PIC states like Michigan, where customers legally have the right to choose separate local and intraLATA service providers, Ameritech has asserted that its billing system is designed so that the local portion of ValueLink customers' bills cannot be separated from the intraLATA portion. [Charity Aff., Ex. C at ¶¶ 16-17.] If that is true, Ameritech's billing system effectively precludes LCI (and other CLECs) from offering even local service to customers in 2PIC states where such customers have ValueLink contracts

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[10] The record of Ameritech's deliberate delay of 1+ dialing parity, while at the same time locking up a huge portion of the Michigan intraLATA toll market into its "ValueLink" plans, could not be clearer. In Docket U-10138, the Michigan PSC ordered Ameritech on five different occasions between February 24, 1994 and October 7, 1996 to open up and allow 1+ dialing parity. Through a complicated series of lower court cases, and finally an appeal to the Michigan Court of Appeals, Ameritech won a stay of the Michigan PSC's last, October 1996 Order. On November 27, 1996, in anticipation of filing for 271 entry, it unilaterally told the Michigan PSC that it would open up 50% of the market on December 2, 1996; 70% on the date it filed its interLATA 271 application, and 100% ten days prior to being allowed to offer interLATA service.

(unless LCI were to assume liability for the ValueLink contract or pay the customer's cancellation penalty). Given the huge installed base subject to the ValueLink contracts (up to 60% in Michigan), Ameritech's defective billing practice presents a substantial impediment to effective local competition. LCI urgently queried Ameritech as to the accuracy of its previous representation, but in its June 9 response, Ameritech artfully dodged the question.

Ameritech's answer filed in response to the Brooks Fiber complaint before the Michigan PSC raises a substantial question whether Ameritech's claimed inability to split the billing explains its unwillingness to provide intraLATA services to customers of competing LECs. In that answer, Ameritech admits that it *does* provide intraLATA toll to customers of various independent local exchange carriers in Michigan. [Ameritech Answer ¶¶ 9-10, 14.] Not surprisingly, those LECs operate in areas where they do not compete with Ameritech to provide local service. Ameritech's answer explains its failure to offer intraLATA toll to customers of competing LECs by asserting that it has "no obligation" to do so. Ameritech says nothing about billing constraints being the reason for a not offering intraLATA to customers of competing LECs. In short, Ameritech appears to have made a "policy decision" not to offer intraLATA toll to competitors' customers. [Ameritech's Answer ¶ 10; Ameritech Submission to Michigan Public Service Commission at 4-5, dated 1/15/97 ("[A]meritech does not hold itself out as a ubiquitous provider of intraLATA toll to end-user customers of all other local exchange carriers in the state.").][11]

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11 In Ameritech's June 9, 1997 letter, Ex. O hereto, Mr. Cox for the first time claims that Ameritech's policy is that "customers may, in a 2 PIC state, elect Ameritech as their intraLATA toll carrier while electing a different local exchange service provider. This representation is totally contradicted by the very recent record Ameritech has developed in Michigan in the Brooks Fiber matter. See Ex. J, Brooks Complaint which Ameritech settled only after several months of litigation. Ameritech is opposing MCI's motion to intervene and complaint on the identical subject, and it has never represented

Continued on the next page

C. Ameritech's Anticompetitive Long-Term Centrex Contracts.

For the past several years, Ameritech has offered Centrex services to small and medium-sized business under long-term contracts. [Lockwood Decl., Ex. K at ¶ 5.] The typical term for such contracts is seven years. [*Id.*] Upon early termination, Ameritech will bill the customer, in one lump sum, a termination charge computed on the basis of the amount of time remaining on the plan. [*Id.*] Ameritech has been quite successful in selling these long-term Centrex contracts. [*Id.*]

LCI has encountered at least 50 separate instances where businesses in the Ameritech region have indicated they cannot elect LCI local service because of Ameritech's long-term Centrex contracts. [Charity Aff., Ex. C at ¶ 19.] More than 20 of these contracts run for a 7-year term, and have huge cancellation penalties. [*Id.*] Ameritech's Centrex product is sold principally to business customers with fewer than 20 lines because, typically, it becomes economic to install a dedicated access for over 20 lines, and to use a PBX on the customer's premises rather than Centrex. Such small business customers are the heart of LCI's current local business. [Charity Aff., Ex. C at ¶ 17.]

D. Ameritech's Anticompetitive Long-Term Pricing Contracts.

Ameritech offers special pricing contracts to high volume users of local exchange services. Such customers are signed up for volume discounts under long-term contracts with minimum usage commitments and early termination charges that resemble the provisions of the ValueLink and Centrex plans. [Lockwood Decl., Ex. K at ¶ 6.] Combined with those

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to the Michigan Administrative Law Judge that "customers may . . . elect Ameritech as their intraLATA toll carrier while electing a different local exchange service provider." See Ex. O at p.3. If this is truly Ameritech's position, it should so inform the Michigan PSC, make immediate arrangements with LCI, which has refused to the eve of this filing, and state and prove on the record to this Commission that the local market is in no way, shape or form tied to its intraLATA toll long-term contracts.

other long-term contracts, these contracts further serve to strengthen the lock Ameritech has in the local telephone service market.

E. Ameritech's Response.

Although LCI complained of these long-term contracts to Ameritech weeks ago (see Exs. E and L hereto), in a letter of just yesterday, June 9, 1997, Ameritech's President (Neil Cox) attempted to defend Ameritech's long-term contracts. [See Letter from Neil Cox to Anne Bingaman, dated June 9, 1997, attached as Exhibit O.] In reality, the Ameritech letter provides no defense at all. It either glosses over or simply fails to address the issues LCI raised. First, the letter only glosses over LCI's query as to whether the tie between its ValueLink contracts and local service is one affected by Ameritech's billing system or its policies. See fn. 11, *supra*.

Second, the letter (Ex. O at p. 2) asserts that "[m]any" of the customers who have agreed to the long-term contracts "are substantial corporations with significant bargaining power," which even if true and relevant, just ignores the many other -- and perhaps most other -- customers who are not. In any event, a market-foreclosing long-term contract is illegal under the antitrust laws even if the customer "bargained" for the contract, because the proper inquiry is the effect on "competition" that results from such contracts.

Third, as to the extent of foreclosure of the market represented by Ameritech's long-term contracts, LCI estimates that it ranges up to 60% of some parts of the business market, based on the Lockwood Decl., Ex. K hereto. The totality of Ameritech's response (Ex. O at p. 2) is: "For numerous reasons, Ameritech takes exception to this claim," and that, "[b]ased upon our estimates, an extremely small share of the relevant market is subject to agreements which may be considered long-term in nature." Not a single fact, document, or anything else is given in support.

Fourth, the letter (Ex. O at p. 2) asserts that Ameritech's long-term contracts "do not, in fact, require exclusivity." Not only is this assertion offered with no support, it defies reality -- the exclusivity described above is real.

Fifth, as to the tying problem raised by LCI, Ameritech appears to claim (Ex. O at p. 2) that, because there was "cooperation between the carriers selected by the customer," there is no illegal tie-in. That, however, is not a defense to an illegal tie under the antitrust laws.

Sixth, as to the Centrex contracts, Ameritech again attempts to defend just some of its agreements (at pp. 2-3) based on the assertions that "[s]ome of the contracts call for volume-driven pricing discounts or volume discounts" or "call for dedicated facilities and personnel," and that the termination charges are not "punitive" but "are appropriate liquidated damages" (a defense not even offered with respect to the punitive penalty charges for the ValueLink contracts). Then, forced to admit that the remainder of such contracts "do require some degree of exclusive dealing," the only "justification" offered (at p. 2) is that "this latter group of contracts frequently covers only a portion of a customer's service lines when compared to the customer's total lines in use." How this is a business justification cognizable under the antitrust laws remains a mystery, and would remain so even if Ameritech were to define, which it chose not to do, what it means by "frequently."

Finally, Ameritech professes (at p. 3) that it "is simply unable to determine the nature of th[e] claim" LCI is making with regard to these long-term contracts, and then attempts to defend them on the grounds that they "often are used in our industry, not only by Ameritech" but also by other local providers, including LCI. While the basis for this assertion is unclear, the key antitrust rule remains: What a monopolist, which Ameritech concededly is, might do is irrelevant to what a new entrant can do. Sauce for LCI or another new entrant in trying to break Ameritech's monopoly stranglehold on a market is not sauce for the Ameritech in trying to maintain its monopoly. In sum, Ameritech has provided no legitimate justification for its anticompetitive long-term contracts.

F. Summary And Relief Requested.

Ameritech knows full well, as its petition concedes, that there is "a strong demand for 'one-stop shopping' -- that is, a consumer preference for a single provider of both local and long distance services." [Ameritech Application at 69 (citing affidavits and recent studies).] Ameritech's long-term intraLATA contracts and billing practices seek to capitalize on precisely this marketing fact by presenting a perhaps insurmountable reason, independent of true competition or quality, that consumers will choose Ameritech as their "one-stop shop." The antitrust laws would not permit that. This Commission must not do so either.

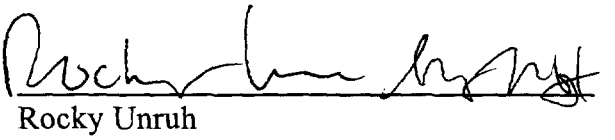
Because it has not taken the required steps to open its monopoly on local exchange service in Michigan to entry by competitors, and instead has taken affirmative steps to erect new barriers to such entry, Ameritech's Section 271 application should be rejected.

VII. CONCLUSION

For these reasons and those set forth in the declarations and affidavits accompanying this opposition, LCI respectfully requests that Ameritech's application be denied.

DATED: June 10, 1997

Respectfully submitted,

By: 

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of: Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1966 to Provide In-Region, InterLATA Services in Michigan	CC Docket No. 97-137

SOURCE MATERIALS SUPPORTING COMMENTS OF LCI INTERNATIONAL TELECOM CORP. IN OPPOSITION TO AMERITECH MICHIGAN'S SECTION 271 APPLICATION

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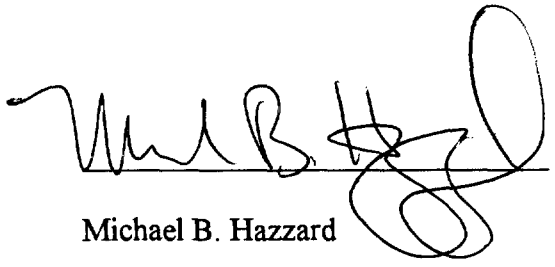
CERTIFICATE OF SERVICE

I, Michael Hazzard, hereby certify that the foregoing "Comments of LCI international Telecom Corp. in Opposition to Ameritech Michigan's Section 271 Application" has been served June 10, to the parties below.



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A

EXHIBIT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of: Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1966 to Provide In-Region, InterLATA Services in Michigan	CC Docket No. 97-137

AFFIDAVIT OF JOSEPH GILLAN
ON BEHALF OF LCI INTERNATIONAL TELECOM CORP.

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of: Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1966 to Provide In-Region, InterLATA Services in Michigan	CC Docket No. 97-137

AFFIDAVIT OF JOSEPH GILLAN ON BEHALF OF LCI INTERNATIONAL TELECOM CORP.

I, Joseph Gillan, being first duly sworn upon oath, do hereby depose and state:

1. I was retained as a consultant by LCI International Telecom Corp. ("LCI") in early 1997 to advise and assist LCI in its negotiations with Ameritech and others to order unbundled network elements in a combination that is often referred to as a "network platform." It is my understanding that a part of LCI's strategy for entry into the local exchange service market is to enter first as a reseller of local service, but to quickly transition its existing and future customers to an LCI network platform comprised of unbundled elements purchased from the RBOCs.

2. Much of my time over the past two years has been devoted to representing and advising a number of potential and actual providers of competitive local service on issues arising under the Telecommunications Act of 1996 ("Act"). For the past several months, I have been heavily involved as a consultant and expert witness on the issues of unbundled elements and the network platform. I

have provided testimony as an expert witness on those issues in section 271 dockets opened by state regulatory agencies, including the Illinois Commerce Commission and the Georgia Public Service Commission, among others.

3. I have been a consultant and expert witness in the telecommunications industry for over 10 years, and before that I spent five years (1980-85) with the Illinois Commerce Commission as the Director of its Market Structure Program. In that position I had primary staff responsibility for the Commission's policy on the level and structure of competition in the telecommunications industry. I also participated in the design of a regulatory framework for interexchange competition and the development of an interstate access plan. I hold B.A. and M.A. degrees in economics from the University of Wyoming.

4. On behalf of LCI, I attended a meeting with Ameritech representatives on February 28, 1997 in LCI's headquarters in McLean, VA. This meeting had been requested by the president of LCI's Local Service Division, Anne Bingaman, to discuss LCI's proposal to place a limited order with Ameritech for a combination of network elements sufficient to establish and test a network platform through which LCI could provide local exchange and exchange access services. I presented LCI's proposal to Ameritech in that meeting, and LCI's proposal was summarized in a post-meeting confirming letter dated March 4, 1997 from Ms. Bingaman to Mr. Ed Wynn, vice-president and general counsel of Ameritech Industry Information Services, who was present at that meeting. (A true and correct copy of the March 4, 1997 letter is attached hereto as Exhibit 1.)

5. Simply stated, LCI's proposal consisted of a request to purchase at cost-based rates three basic network elements in combination: the loop, the local switch, and access to Ameritech's interoffice network for the transport and termination of calls. LCI's intent was (and is) to rely on the existing algorithms in the Ameritech switch for routing of local exchange and interexchange traffic, and to

share with Ameritech (and, where applicable, other unbundled local switch purchasers) the Ameritech interoffice network for purposes of routing local calls. By purchasing these unbundled elements as a network platform, LCI would become the local exchange and exchange access provider to its end-users, and would therefore be entitled to collect access charges, both originating and terminating, from interexchange carriers that originated and terminated calls with those end-users. LCI would also be entitled to collect reciprocal compensation for the termination of local calls to its end-users, and would be obligated to pay compensation for the termination of local calls originated by LCI's customers.

6. LCI recognized at the outset of its negotiations with Ameritech that Ameritech did not believe it was obligated under the Act to provide the type of common transport at cost-based rates that had been requested by LCI. LCI was also aware that Ameritech had taken various, and conflicting, positions before state regulatory agencies on the issue of switched access, which indicated that Ameritech did not intend to allow LCI to collect access charges for interexchange calls originated by or terminated to LCI's end-user customers who were being provided service from the network platform. LCI and I both believed that Ameritech's position on access charges was contrary to the Act and the FCC's Interconnection Order, which specifically recognized that CLECs who provide exchange access services over unbundled elements "may assess exchange access charges to IXCs originating or terminating toll calls on those elements." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Document No. 96-98, First Report and Order (August 8, 1996), at ¶ 363.

7. In order to avoid having the legal disputes create an impasse between the parties, LCI proposed that for purposes of a test, the parties put aside their respective legal positions, with Ameritech providing the network element configuration

(including common transport) as requested by LCI, but with LCI agreeing to pay usage charges for that transport at some agreed upon amount that would be in excess of the cost-based rate that LCI contended was required under the Act. LCI emphasized that it wanted to proceed immediately with a test of the network platform it requested so that when the legal disagreements were resolved, LCI could be assured that (1) it could order and deploy the network elements in combination; (2) Ameritech could provision them in commercially reasonable quantities; (3) LCI customers could be added to the platform and receive timely and reliable service; and (4) Ameritech had the systems and procedures in place to measure, record, and exchange all of the data necessary to permit LCI to bill its end-users, bill other local carriers for reciprocal compensation, and bill interexchange carriers for originating and terminating access charges.

8. Despite a subsequent meeting in Chicago with Ameritech representatives on April 10, which I attended, Ameritech has thus far refused to provide the unbundled elements in the combination requested by LCI, and to proceed with the test of the network platform that LCI proposed. Instead, Ameritech is only willing to provide unbundled network elements in one of two combinations: (1) loops, unbundled switching and dedicated transport,[1] and (2) loops and unbundled switching, with transport over Ameritech's network provided not as a network element, but rather as a wholesaler service. Significantly, under neither proposal is Ameritech willing to acknowledge that LCI, as the exchange service and exchange access

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[1] Ameritech's proposal purports to allow LCI to "share" this dedicated transport with other telecommunication carriers, thereby transforming it to the "shared transport" that Ameritech contends it is obligated to provide under the Act.

provider, would be entitled to collect access revenue and reciprocal compensation in the manner requested by LCI.

9. Neither of Ameritech's so-called product offerings is acceptable to LCI, for obvious reasons. As a new entrant, LCI would not expect for some time to have developed a customer base sufficient to justify the cost of purchasing dedicated transport to some (or all) of Ameritech's end offices and developing the routing instructions that would be necessary to route local exchange and interexchange calls over that dedicated network.

10. Ameritech's second proposal is not a network element combination, but a hybrid resale product that would effectively prevent LCI from offering a competitive local exchange service product that takes advantage of the efficiency of Ameritech's existing transport network.

11. Finally, neither proposal would permit LCI to collect the access charges that are needed to offset the cost of the unbundled elements, enabling LCI to offer a competitively priced local service product through unbundled elements.

12. I have testified on several occasions before the Illinois Commerce Commission that Ameritech's position on unbundled elements as conveyed in its negotiations with LCI is not in compliance with the Act, the FCC's Interconnection Order, and the regulations under the Act as promulgated by the FCC. Ameritech's position has also been rejected by the Hearing Examiner for the Illinois Commerce Commission in a proposed order issued on March 6, 1997,[2] and by the staff of the Illinois Commerce Commission, as well.

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[2] See *Investigation concerning Illinois Bell Telephone Company's compliance with Section 271(c) of the Telecommunications Act of 1996,* Docket No. 95-0404, Hearing Examiner's Proposed Order (March 6, 1997) at p. 36 ("We find that Ameritech's position on shared transport is inconsistent with the FCC's order and with the common understanding of shared transport.")

13. I have been advised that Ameritech has invited LCI to observe a "test" of a network element combination ordered by AT&T, and I have read the section of the Affidavit of Daniel J. Kocher of Ameritech in which he discusses the "test" (pp. 33-45 and attachment 7). Phase 1 of the test as discussed by Mr. Kocher is extremely limited (only 20 lines), and will not test certain critical aspects of Ameritech's ability to furnish combined network elements that were requested by LCI in its test. In particular, there will be no test in Phase 1 of Ameritech's ability to measure, record and transmit billing information to AT&T, including billing data that would permit AT&T to bill access charges, originating, and terminating, and reciprocal compensation. The test is further deficient in that:

- It is limited in the number of line class codes that will be used;
- It is only testing one type of switch, whereas Ameritech has several different switch types in its network;
- It will not test the ability to connect a customer served by one network platform to a customer served by a different network platform; and
- It will not test whether Ameritech will be able to suppress its access billings to IXCs from calls originating and terminating over the network platform.

14. It is my understand that there will be a second phase of the AT&T test, but that the details of that test have yet to be agreed to by the parties. As it stands now, the AT&T "test" is so limited that the results from that test will not permit any meaningful determination as to whether Ameritech is capable of providing combined network elements in a commercially viable manner.

I hereby swear, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct, to the best of my knowledge, information and belief.

Joseph Gillan

STATE OF FLORIDA)
COUNTY OF MONROE)

Subscribed and sworn to before me this 9th day of JUNE, 1997, by Joseph Gillan.

My commission expires 11/29/99

Susan M. Hyde
MY COMMISSION # CC513156 EXPIRES
November 29, 1999
BONDED THRU TROY FAIN INSURANCE, INC.

Notary Public